IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO. 6 OF 2004.

Mr. Rosario D'Souza,
r/o Revona, Pathaiwada,
Quepem, presently at
Sub-Jail, Sada,
Vasco da Gama. ... Applicant.

Versus

State of Goa. ... Respondent.

Mr. S.G. Dessai, Senior Advocate with Mr. Arun Bras de Sa, Advocate for the Applicant.

Mrs. W. Coutinho, Additional Public Prosecutor for the Respondent/State.

Coram : P.V. HARDAS, J.

Date : 21st April 2004.

ORAL JUDGMENT.

The applicant/original accused, in Sessions Case No. 5 of 2004, has filed the present revision application assailing the correctness of the Order passed by the Ist Additional Sessions Judge, Panaji, dated 1st March 2004, by which the Ist Additional Sessions Judge, Panaji, directed the framing of charge against the applicant/accused for offences punishable under Sections 143, 147, 148, 341, 427, 307, 302, 149 and 120-B of the Indian Penal Code.

2. It is not necessary to advert to the facts as emerge from the charge-sheet in order to decide this revision. Suffice it to say that the applicant alongwith other 21 accused was alleged to have committed

the aforesaid offences. A charge-sheet against all the accused came to be laid in the Court of the Magistrate and which was subsequently committed to the Court of Sessions for trial. Since the applicant was absconding, the applicant was not put on trial alongwith the other accused. The trial proceeded against the 21 accused and the learned trial Court convicted two accused and acquitted 19 accused. The two accused filed a Criminal Appeal in this Court, which was allowed and the conviction and sentence as passed by the learned trial Court was quashed and set aside. Subsequent to this the applicant was arrested and meanwhile a supplementary charge-sheet came to be filed against the applicant/accused. After committal, when the case was before the trial Court for framing charge, on behalf of the applicant a plea of discharge was made, which was negatived by the Court and by the Order impugned in the Criminal Revision Application the trial Court directed framing of charge for the aforestated offences.

3. Mr. Dessai, learned senior counsel appearing for the applicant, has urged before me that the earlier charge-sheet and the trial, though restricted to 21 accused, the findings rendered by the Court therein would be binding on the Court at the time of framing of the charge. In order to expand the submission, the learned senior counsel by way of an illustrative example

has stated that the recovery panchanama in this case, which is same as in the earlier case, cannot be taken into consideration by the trial Court at the time of framing of the charge as, according to the learned counsel, the findings recorded by this Court negative the factum of recovery. He, thus, submits that whatever findings recorded by this Court in the appeal filed by the convicted accused ought to have been taken into consideration by the learned trial Judge while framing the charge. According to the learned senior counsel, this would squarely be a case governed by rule of issue of estoppel. In support of this Mr. Dessai has placed reliance on the Judgment of the Apex Court in **Manipur Administration, Manipur v. Thokchom Bira Singh**, A.I.R. 1965 S.C. 87; **Lalta and others v. The State of U.P.**, A.I.R. 1970 S.C. 1381 and **Ravinder Singh v. State of Haryana**, A.I.R. 1975 S.C. 856.

4. The learned trial Court while repelling the plea of the accused for discharge has held that the present accused goes back to the position as it was when the charge-sheet was initially filed as against the other accused persons showing the present accused as absconding and, therefore, a charge is bound to be framed by 'forgetting' the Judgments of acquittal of other accused. The learned Judge probably meant to use the expression 'ignoring' instead of 'forgetting'.

5. Undisputedly the applicant was not put on trial alongwith the other accused as the applicant/accused was absconding. A separate charge-sheet was, therefore, filed against him and the applicant/accused is now put to trial. At the time of framing of the charge, the Court has to consider whether the material on record discloses prima facie commission of the offence. The learned trial Court is not expected to embark on the course of appreciation of the evidence nor is it called upon to sift the material and probe into material to find out whether in reality there was commission of offence. The Court is only required to scrutinize and evaluate the material insofar as finding out if an offence is disclosed. Undisputedly the material, that is, the charge-sheet comprises of statements and documents filed by the police which discloses the commission of offences. If that be the case, the fact that the High Court in appeal at the instance of the other accused has rendered certain findings, cannot influence the trial Court dealing with a case of an accused who was absconding and particularly in the case of an accused against whom an independent charge-sheet had been filed. What would be the effect of the findings of this Court in respect of appreciation of evidence is a matter to dealt with by the Court at the time of final adjudication of the case. Therefore, according to me, the learned trial Court was perfectly

right in ignoring the Judgment rendered in the trial of the other 21 accused. The trial in respect of the present applicant would have to be a full fledged trial giving every opportunity to the applicant to meet the case of the prosecution. Whether ultimately on the face of the evidence on record an offence of either unlawful assembly or criminal conspiracy is not made out is not a matter for the Court to take into consideration at the time of framing of the charge. Therefore, according to me, there is no force in the submission on behalf of the applicant that the learned trial Court ought to have considered the findings recorded by the Court in the trial in respect of the other 21 accused for the purpose of framing of the charge against the present applicant.

6. Dealing with the submission of issue estoppel, the Apex Court in **Pritam Singh and another v. The State of Punjab,** 1956 S.C. 415 has held:-

> "The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim 'res judicata pro veritate accipitur' is no less applicable to criminal than to civil proceedings. Thus an acquittal of an accused in a trial under S. 19(f), Arms Act, is tantamount to a finding that the prosecution had failed to establish

> the possession of certain revolver by the accused as alleged."

7. The Apex Court in the case of Manipur Administration, Manipur v. Thokchom Bira Singh (supra) has further held:-

> " The rule of issue estoppel in a criminal trial is that where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or res judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence, but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of S. 403(2). The rule is not the same as the plea of double jeopardy or autrefois acquit. The rule does not introduce any variation in the Code of Criminal Procedure either in investigation, enquiry or trial. It also does not prevent the trial of any offence as does autrefois acquit but only precludes evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding recorded at an earlier criminal trial before a court of competent jurisdiction. The rule thus relates only to the admissibility of evidence which is designed to upset a finding of fact recorded by a competent court at a previous trial."

8. The Apex Court in Lalta and others v. The State of U.P. (supra) has held:-

> " Where an issue of fact has been tried by a competent Court on a former occasion and a finding of fact has been reached in favour of accused,

> such a finding would constitute an estoppel or res judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of Section 403(2) Criminal P.C.. Section 403 does not preclude the applicability of this rule of issue estoppel."

9. The Apex Court in Ravinder Singh v. State of Haryana (supra) has held:-

> " There is an issue estoppel, if it appears by record of itself or as explained by proper evidence, that the point was determined in favour of a prisoner in a previous criminal trial which is brought in issue on a second criminal trial of the same prisoner. There must be a prior proceeding determined against the State necessarily involving an issue which again arises in a subsequent proceeding by the State against the same prisoner."

10. The rule of issue estoppel can only be invoked if a finding of fact is recorded in respect of an accused in an earlier case and the prosecution seeks to lead evidence for disturbing that finding which is recorded. The rule of issue estoppel would, thus, arise for exclusion of the evidence to disturb the finding recorded in a case of an accused in an earlier trial. In the present case, the applicant, admittedly, was not an accused, who faced the trial alongwith the other 21 accused. Therefore, the findings rendered in that case obviously, though binding, cannot be taken into

consideration by the Court at the time of framing of the charge. Thus, the question of application of rule of issue estoppel in the present case would not arise. Since at this stage I am not concerned nor am I called upon to decide the effect of the Judgment of this Court in respect of the co-accused, therefore, these observations may not be construed as deciding that question. It would be open to the trial Court before whom the evidence is led and is called upon to decide the question of relevancy of the findings recorded in the trial of the other accused, to decide the said point in accordance with law.

11. In the result, therefore, according to me, this Criminal Revision Application is sans merit and is, therefore, dismissed. Record and Proceedings be remitted to the trial Court.

(P.V. HARDAS)
JUDGE.

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